

# PRICING AND ADVERTISING OF CONSUMER ITEMS

## Act 449 of 1976

AN ACT to regulate the pricing of consumer items and the advertising of consumer items, services, goods, merchandise, commodities, and real property; to prescribe the powers and duties of certain state and local officials in relation thereto; to provide remedies and penalties; and to repeal certain acts and parts of acts.

**History:** 1976, Act 449, Eff. Jan. 1, 1978.

**Popular name:** Scanner Law

**Popular name:** Item Pricing Act

*The People of the State of Michigan enact:*

### **445.351 Definitions.**

Sec. 1. As used in this act:

(a) "Advertising" means all representations disseminated in any manner by any means for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of a consumer item, service, good, merchandise, commodity, or real property.

(b) "Automatic checkout system" means an electronic device, computer, or machine which determines the price of a consumer item by using a product identity code, and may but is not required to include an optical scanner.

(c) "Class of item" means a group of consumer items which may vary by brand, style, pattern, color, or size other than weight or volume. Items within a class must otherwise be identical and offered at the same total price.

(d) "Consumer item" means an article of tangible personal property used or consumed, or bought for use or consumption, primarily for personal, family, or household purposes.

(e) "Director" means the director of the department of agriculture or his authorized representative.

(f) "Person" means an individual, firm, partnership, corporation, association, or other legal entity.

(g) "Sale at retail" means the transfer of an interest in a consumer item by a person regularly and principally engaged in the business of selling consumer items to a buyer for use or consumption and not for resale.

(h) "Total price" means the full purchase price of a consumer item, excluding sales tax and container deposit.

**History:** 1976, Act 449, Eff. Jan. 1, 1978.

**Popular name:** Scanner Law

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### **445.352 Implementation and administration of §§ 445.353 and 445.354; investigations; rules.**

Sec. 2. The director shall be responsible for the implementation and administration of sections 3 and 4 and:

(a) Shall investigate complaints concerning violations of sections 3 and 4, and shall conduct such other investigations as he deems advisable.

(b) Shall, as the state director of weights and measures, promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, for the implementation and administration of sections 3 and 4.

**History:** 1976, Act 449, Eff. Jan. 1, 1978.

**Popular name:** Scanner Law

**Popular name:** Item Pricing Act

**Administrative rules:** R 285.555.1 et seq. of the Michigan Administrative Code.

### **445.353 Stamping or affixing total price of consumer item; exemptions; lists and signs for classes of items or individual items, "item" defined.**

Sec. 3. (1) The total price of a consumer item displayed or offered for sale at retail shall be clearly and conspicuously indicated in arabic numerals, so as to be readable and understandable by visual inspection, and shall be stamped upon or affixed to the consumer item. If the consumer item is in a package or container, the total price shall be stamped upon or affixed to the outside surface of the package or container and need not be placed directly upon the consumer item.

(2) The requirements of subsection (1) shall not apply to:

(a) A consumer item sold by weight or volume which is not in a package or container.

(b) A consumer item sold in a coin operated vending machine.

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(c) Prepared food intended for immediate consumption, as defined in section 4g of Act No. 167 of the Public Acts of 1933, being section 205.54g of the Michigan Compiled Laws.

(d) A consumer item purchased by mail or through catalog order, or which is not otherwise visible for inspection by the consumer at the time of the sale, and which is ordered or requested by the consumer, if the price of the item is on the consumer's written order or request or on a bill, invoice, or other notice which describes or names the item and which is enclosed with the item.

(e) An unpackaged food item.

(f) A consumer item which has a total weight of not more than 3 ounces, a total volume of not more than 3 cubic inches, and a total price of not more than 30 cents.

(g) Live plants.

(h) Live animals.

(i) Motor vehicles.

(j) Motor vehicle parts.

(k) Packages of 20 or fewer cigarettes.

(l) Greeting cards sold individually which have a readable coded price on the back of the card.

(m) Merchandise ordered as a gift by a consumer which is sent by mail or other delivery service to a person other than the consumer by the retailer at the request of the consumer.

(3) In addition to the exemptions allowed in subsection (2), a retailer may choose to not individually price mark not more than 25 classes of items or individual items which classes or items shall be listed and posted in a conspicuous place in the retail store, and may choose to not individually price mark not more than 25 additional classes of items or individual items which are advertised or featured at a reduced price.

(4) The price and the name or description of a class of items or individual items not marked pursuant to subsection (3) shall be indicated by a clear, readable, and conspicuous sign in immediate conjunction with the area in which the unmarked item or class of items is displayed.

(5) As used in subsections (3) and (4), "item", except as otherwise provided in this subsection, means 1 or more identical articles, sold in identical quantities or measures. An item may include more than 1 product, brand, kind, size, or type of packaging, if they are packaged together and sold as a set and the sets are identical in all respects, including quantity or measure.

**History:** 1976, Act 449, Eff. Jan. 1, 1978;—Am. 1979, Act 193, Imd. Eff. Dec. 21, 1979.

**Popular name:** Scanner Law

**Popular name:** Item Pricing Act

### **445.354 Charging more or less than price indicated; evidence of violation.**

Sec. 4. (1) A person shall not knowingly charge or attempt to charge for a consumer item a retail sale price exceeding the price required to be indicated pursuant to section 3. It shall not be construed to be a violation of this act to charge for a consumer item a total price less than the price required to be indicated pursuant to section 3.

(2) It shall be prima facie evidence of a violation of this section if a price charged or attempted to be charged as a result of electronic identification or calculation by an automatic checkout system exceeds the price required to be indicated pursuant to section 3.

**History:** 1976, Act 449, Eff. Jan. 1, 1978;—Am. 1979, Act 193, Imd. Eff. Dec. 21, 1979.

**Popular name:** Scanner Law

**Popular name:** Item Pricing Act

### **445.355 Advertising availability of consumer item at sale price, special price, or reduced price; dates and quantity available; requirements for advertising at specific price through media; written guarantee to deliver; providing similar item; holding item for delivery; exceptions.**

Sec. 5. (1) A person shall not knowingly advertise the availability of a consumer item for sale at retail at a sale or special price or as being reduced in price by an amount or proportion unless the advertisement includes the dates that item is available, or the quantity available at the advertised price together with information that the item is available at that price only as long as the advertised quantity lasts. A limitation on the quantity available of a consumer item per customer shall be clearly disclosed in an advertisement of the consumer item.

(2) If a consumer item is advertised at a specific price through the media which is not indicated to be a special, sale, or reduced price the advertiser shall do one of the following:

(a) Make the consumer item available at the advertised price for not less than 5 days after the date the consumer item was last advertised. If the item is not available for this period of time the requirements of subsection (3) shall

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apply. The advertiser shall not be required to make the consumer item available nor fulfill the requirements of subsection (3) if the unavailability of the consumer item is due to a governmental action, a plant closing, or an act of God and if the specific cause of the unavailability of the consumer item is posted conspicuously for the review of the consumer.

(b) Indicate in the advertisement the dates the consumer item is available at the advertised price. If the item is not available for the period of time indicated, the requirements of subsection (3) shall apply.

(c) Indicate in the advertisement the quantity available at the advertised price together with the information that the consumer item is available at the advertised price only as long as the stated quantity lasts.

(3) If an advertisement under this section does not state the quantity of the consumer item available, and if an item of merchandise cannot be sold at the advertised price throughout the advertised period of sale, the advertiser shall make available to the customer a written guarantee to deliver under the advertised conditions the consumer item at a future date stated in the guarantee, or upon notification of the customer by the merchant. If the advertised consumer item cannot be obtained to satisfy the condition of the guarantee, the advertiser may provide a similar consumer item of equal or greater monetary value. The notification of availability shall take place not more than 90 days after the guarantee is given. After the notice of availability is given, the merchant shall hold the consumer item for delivery to the customer for not less than 7 days, except the merchant need hold the consumer item for only 2 days if it is a perishable item.

(4) This section shall not apply to baked goods, fresh fruit, and fresh vegetables.

**History:** 1976, Act 449, Eff. Jan. 1, 1978;—Am. 1979, Act 193, Imd. Eff. Dec. 21, 1979.

**Popular name:** Scanner Law

**Popular name:** Item Pricing Act

### **445.356 Advertisement; untrue, deceptive, or misleading statement or representation; failure or refusal to sell in manner or at price advertised; determination of deceptive or misleading advertising; intent not to sell; defective, blemished, or rejected goods, merchandise, or commodities; seconds; identification.**

Sec. 6. (1) A person shall not knowingly make, publish, disseminate, circulate, or place before the public an advertisement which contains a statement or representation which is untrue, deceptive, or misleading.

(2) The failure to sell goods, merchandise, commodities, or services in the manner advertised, or the refusal to sell at the price at which it was advertised, or in accordance with other terms and conditions of the advertisement creates a rebuttable presumption of an intent to violate this act.

(3) In determining whether advertising is deceptive or misleading, the extent to which the advertising fails to reveal facts which are material in light of the representations made or suggested in a positive manner shall be taken into account.

(4) A person shall not make, publish, disseminate, circulate, or place before the public an advertisement with the intent, design, or purpose not to sell at the price stated in the advertisement, or otherwise communicated, or with intent not to sell the goods, merchandise, commodities, or service so advertised.

(5) A person shall not advertise, call attention to, or give publicity to the sale of goods, merchandise, or commodities which are known to be substantially defective and therefore not first class, or which consist of articles or units or parts known as seconds or blemished goods, merchandise, or commodities, which goods, merchandise, or commodities have been rejected by the manufacturer of the goods, merchandise, or commodities as not being first class, unless there is displayed directly in connection with the name and description of the goods, merchandise, or commodities, a direct and unequivocal statement, phrase, or word which will clearly indicate that the goods, merchandise, or commodities so advertised are seconds or are blemished goods, merchandise, or commodities, or have been rejected by the manufacturer of the goods, merchandise, or commodities. Merchandise advertised, offered for sale, and sold as a unit or set consisting of more than 1 part or piece shall be sufficiently identified as not first class, within the meaning of this section, if advertised, offered for sale, and sold as a unit or set at the single price advertised, and displayed in connection with a direct and unequivocal statement, phrase, or word identifying the goods as not first class as required by this section.

**History:** 1976, Act 449, Eff. Jan. 1, 1978.

**Popular name:** Scanner Law

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### **445.357 Discrimination in advertising real property; evidence; legal or equitable remedies.**

Sec. 7. A person shall not make, publish, disseminate, circulate, or place before the public, an advertisement

concerning the buying, selling, exchanging, or trading of real property if that advertising contains language expressing discrimination on the part of the seller concerning prospective buyers because of race, creed, color, national origin, sex, or marital status. This act shall not authorize the attorney general to assume facts not in evidence. The attorney general shall at all times bear the burden of proof to all charges made against a party. This act shall not diminish the right of a party to direct and immediate legal or equitable remedies in the courts of this state.

**History:** 1976, Act 449, Eff. Jan. 1, 1978.

**Popular name:** Scanner Law

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**445.358 Publication of advertisement in good faith and without knowledge of falsity or deception.**

Sec. 8. This act shall not apply to an owner, publisher, printer, agent, or employee of a newspaper or other publication, periodical, circular, including those circulars prepared for national distribution, or outdoor advertising or of a radio or television station, who in good faith and without knowledge of the falsity or deceptive character of an advertisement, publishes, causes to be published, or takes part in the publication of an advertisement in violation of this act.

**History:** 1976, Act 449, Eff. Jan. 1, 1978.

**Popular name:** Scanner Law

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**445.359 Injunction; assurance of discontinuance; notice of violation; penalty; jurisdiction; rules.**

Sec. 9. (1) The attorney general may maintain an action to enjoin a continuing violation of this act. If the court finds that the defendant is violating or has violated this act, it shall enjoin him from a continuance of that violation. It shall not be necessary that actual damages to a person be alleged or proved.

(2) A proceeding shall not be instituted for an injunction unless the attorney general has notified the defendant of his intention to seek an injunction if the defendant does not cease and desist or take positive action to cease and desist from continuing to act in violation of this act. The notice shall be given at least 48 hours before the filing of the action. An injunction shall not issue if the defendant has ceased or has taken positive action to cease and desist violating this act, upon receipt of the notice.

(3) The attorney general may accept an assurance of discontinuance of a practice alleged to be in violation of this act from the person engaging in, or who was engaged in, that practice. The assurance of discontinuance shall be in writing and be filed with the clerk of the circuit court of the county in which the alleged violator resides or has his principal place of business. A filing fee shall not be required for the filing of an assurance with the clerk of the circuit court. The assurance of discontinuance shall be signed by the person and shall contain a statement describing the acts or practices for which the assurance of discontinuance is being given and the specific sections of the law prohibiting those acts or practices. The assurance is not an admission of any fact or issue at law.

(4) A prosecuting attorney or law enforcement officer receiving notice of an alleged violation of this act, or of a violation of an injunction, order, decree, or judgment issued in an action brought pursuant to this section, or of an assurance under this act, shall immediately forward written notice of the violation together with any information he may have to the office of the attorney general.

(5) A person who knowingly violates this act or the terms of an injunction, order, decree, or judgment issued pursuant to this section shall forfeit and pay to the state a civil penalty of not more than \$1,000.00 for the first violation and not more than \$5,000.00 for the second and any subsequent violation. For the purposes of this section, the court issuing an injunction, order, decree, or judgment shall retain jurisdiction, the cause shall be continued, and the attorney general may petition for recovery of a civil penalty as provided by this section.

(6) The attorney general may promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as amended, to implement and administer sections 5 to 12 of this act.

**History:** 1976, Act 449, Eff. Jan. 1, 1978.

**Popular name:** Scanner Law

**Popular name:** Item Pricing Act

**Administrative rules:** R 14.201 et seq. of the Michigan Administrative Code.

**445.360 Declaratory judgment; injunction; damages; attorneys' fees.**

Sec. 10. (1) Whether or not a person seeks damages or has an adequate remedy at law, a person may bring an action to do either or both of the following if the attorney general or prosecuting attorney fails to initiate action within 60 days after receiving notice of an alleged violation of this act:

- (a) Obtain a declaratory judgment that a practice is in violation of this act.
- (b) Enjoin by temporary or permanent injunction a person who is engaging or is about to engage in a practice in violation of this act.

(2) Except as provided in section 10a, a person who suffers loss as a result of a violation of this act may bring an individual or a class action to recover actual damages or \$250.00, whichever is greater, for each day on which violations of this act have been found together with reasonable attorneys' fees not to exceed \$300.00 in an individual action.

**History:** 1976, Act 449, Eff. Jan. 1, 1978;—Am. 1984, Act 344, Eff. Mar. 29, 1985.

**Popular name:** Scanner Law

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**445.360a Section applicable to sale at retail; conditions; conditions to bringing or joining in action; exception.**

Sec. 10a. (1) Except as provided in subsection (3), this section applies to a sale at retail which meets all of the following conditions:

- (a) There is a price stamped on or affixed to the item.
- (b) The sale is recorded by an automatic checkout system.
- (c) The buyer is given a receipt which describes the item and states the price charged for the item.

(2) Before bringing or joining in an action as provided in section 10(2), within 30 days after purchasing an item, a buyer who suffers loss because the price charged for the item is more than the price stamped on or affixed to the item shall notify the seller in person or in writing that the price charged is more than the price stamped or affixed. The notice shall include evidence of the loss suffered by the buyer. If, within 2 days after the notification, the seller tenders to the buyer an amount equal to the difference between the price stamped or affixed and the price charged, plus an amount equal to 10 times that difference but which is not less than \$1.00 or more than \$5.00, the buyer is barred from any further recovery for that loss. If the loss is suffered by 1 buyer within 1 transaction on 2 or more identical items, the amount to be tendered by the seller shall be the difference on each item, plus an amount equal to 10 times the difference on a single item but which is not less than \$1.00 and not more than \$5.00. If the seller does not tender this amount, the buyer may bring or join in an action as provided in section 10(2).

(3) This section does not apply to a sale at retail in which the seller intentionally charges more for an item than the price stamped on or affixed to the item.

**History:** Add. 1984, Act 344, Eff. Mar. 29, 1985.

**Popular name:** Scanner Law

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**445.361 Investigation and action by prosecuting attorney.**

Sec. 11. A prosecuting attorney may conduct an investigation pursuant to this act and may institute and prosecute an action under this act in the same manner as the attorney general.

**History:** 1976, Act 449, Eff. Jan. 1, 1978.

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**445.362 Other causes of action not affected; liberal construction; inconsistent ordinance or regulation prohibited.**

Sec. 12. This act shall not affect any other cause of action which is available and shall be liberally construed to effectuate its purpose. A city, village, township, or county shall not enact an ordinance or other regulation inconsistent with this act or with a rule promulgated under this act.

**History:** 1976, Act 449, Eff. Jan. 1, 1978.

**Popular name:** Scanner Law

**Popular name:** Item Pricing Act

**445.362a Provisions inapplicable to nonprofit food cooperatives.**

Sec. 12a. This act shall not apply to nonprofit food cooperatives.

**History:** Add. 1979, Act 193, Imd. Eff. Dec. 21, 1979.

**Popular name:** Scanner Law

**Popular name:** Item Pricing Act

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### **445.363 Repeal of §§ 445.801 to 445.809.**

Sec. 13. Act No. 241 of the Public Acts of 1966, being sections 445.801 to 445.809 of the Compiled Laws of 1970, is repealed.

**History:** 1976, Act 449, Eff. Jan. 1, 1978.

**Popular name:** Scanner Law

**Popular name:** Item Pricing Act

### **445.364 Effective date.**

Sec. 14. This act shall take effect January 1, 1978.

**History:** 1976, Act 449, Eff. Jan. 1, 1978.

**Popular name:** Scanner Law

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